as for the assistance of future judges in passing on identical or similar states of fact. The second is a real objection if true, but it is doubtful if the dignified statement of universally suspected differences of opinion does not rather inspire confidence in the independence of the judges. The third objection is put with great force in a recent article. *Dissenting Opinions*, by William A. Bowen, 17 Green Bag 690 (Dec., 1905).

The author's main thesis is that certainty is more important than justice in the law. To gain it he would have courts speak with but one unwavering voice, however divided in the council-chamber the judges may be. Undoubtedly the law would, in a sense, become more settled by such a course. But many advocates of dissenting opinions are willing to have the law temporarily unsettled by a cogent dissent, since they do not admit the total undesirability of such a condition. So long as courts are permitted to reverse their own decisions the law will never be definitely fixed. Moreover, as the law is not composed of unrelated rules, it will always be found that parts out of harmony with the whole will require alteration to avoid contradictions. For these reasons a writer on the other side prefers uncertainty in the law until it can be settled rightly. See *Dissenting Opinions*, by V. H. Roberts, 39 Am. L. Rev. 23. Mr. Roberts points out that dissenting opinions have often served as the basis for correction of unwise decisions, or, where such decisions have not been overruled, have limited their further extension. So too, another writer has paid high tribute to many of the dissenting opinions on constitutional questions of the Supreme Court Justices, while deprecating ordinary dissent. See *Great Dissenting Opinions*, by Hampton L. Carson, 50 Alb. L. J. 120. Mr. Carson outlines the sensible influence of these opinions upon the development of constitutional construction. As against this, the writer of the present article maintains the extreme position that the injuriousness of a dissenting opinion is in direct proportion to its strength and to the importance of the case. The chief fallacy of the article lies in the author's failure to distinguish between the results of unavoidable differences of opinion and the results of the expression of such differences.

Most of us, however, will agree with the writer's strictures on the abuses of the privilege. A large part of the criticism to which it has been subjected is not due to a fundamental weakness, but to the tendency of minority judges to travel out of the law into a discussion of moral, social, and political questions which they think the decision of the court will precipitate. Of course, dissent which is hair-splitting or on questions of fact is always objectionable. If judges would dissent only when they believed their brethren to be seriously mistaken, and would confine themselves to a dignified exposition of the exact point of difference on the law, the abolitionist camp would lose much of its ammunition.

LIFE SALVAGE. — While strongly commending the general consistency of the law of salvage, Mr. Frederic Cunningham, in a recent article, finds in it one strange anomaly, in regard to the law of life salvage. *Life Salvage*, 17 Green Bag 708 (Dec., 1905). If the passengers of a ship are rescued without saving the ship itself, no compensation can be recovered either from the passengers or from the owner of the vessel. *The George W. Clyde*, 80 Fed. Rep. 157. On the other hand, if passengers and ship are both saved, the owner of the vessel must pay a greater amount of salvage than the mere rescue of the ship would entail. *The Bremen*, 111 Fed. Rep. 228.

Mr. Cunningham fully appreciates the desirability of giving even greater encouragement to the rescue of life at sea than is offered for the saving of property, but protests with manifest reason against compelling the ship-owner to furnish that encouragement when he derives no substantial benefit in return. Such an objection, of course, could not be urged where the saving of life frees the ship-owner from liabilities in damages which would otherwise be incurred. As a solution of the difficulty, the writer suggests the passage of a United States statute, allowing the salvor to recover against the person whose life he

has saved. In England, since the Merchant Shipping Act of 1854, the matter has been regulated by a statute which authorizes the Board of Trade in its discretion to pay life salvage out of the Mercantile Marine Fund, in the event of the ship's being entirely lost or its value insufficient to meet the claims. The writer would apparently favor recourse to some such general fund only as an alternative, where the person saved is unable to pay, and suggests that Mr. Carnegie's Peace Hero Fund would be well applied to such a purpose.

The writer's objections to the present status of life salvage in our maritime law are obviously well reasoned, but issue may be taken on the remedy suggested. To say that he who in effect has created property by saving it, shall be entitled to a portion of that property, seems to be no distortion of general legal principles. The right is in the nature of a lien, and the remedy is pursued by a proceeding *in rem* against the property itself. *The Sabine*, 101 U. S. 384. Such reasoning, however, reduces itself to an absurdity when applied to the saving of human life. Here the remedy must be sought by an action *in personam*, and the anomalous doctrine of compulsory rewards could scarcely find a place for itself among common law principles. As suggested by the writer's allusion to the Carnegie Hero Fund, the appeal is to philanthropy rather than to law. A feasible solution of the problem, however, would be the statutory establishment of a fund similar to the English Mercantile Marine Fund, but which would free the ship-owner from all obligations for life salvage, except in cases where he would have been liable in damages to the passengers because of negligence.

ACTIONS BY UNBORN INFANT. *James M. Kerr.* Maintaining that an infant should be allowed to recover for damages to its person while *en ventre sa mere.* 61 Cent. L. J. 364.

CONSTITUTIONALITY OF THE INDIANA ANTI-CIGARETTE LAW, THE. *Thomas A. Sims.* Discussing the law's effect on infra-state traffic and importation into the state. 4 Mich. L. Rev. 124. See 18 HARV. L. REV. 530.

CUSTOMARY LAW IN MODERN ENGLAND. *W. Jethro Brown.* 5 Columbia L. Rev. 561. See *supra.*

DANGEROUS POSITION FOR THE RAILROADS, A. *David Walter Brown.* Maintaining that since the power to regulate railroad rates is not prohibited absolutely by the Constitution, the railroads, by denying that it is in Congress, "throw down the bars" to state regulation. 5 Col. L. Rev. 600.

DISSENTING OPINIONS. *William A. Bowen.* 17 Green Bag 690. See *supra.*

DOCTRINE OF ASSUMED RISK AND CONTRIBUTORY NEGLIGENCE AS DEFENSES TO ACTIONS FOR DAMAGE RESULTING FROM A FAILURE TO COMPLY WITH EXPRESS STATUTORY PROVISIONS, THE. *M. C. Freerks.* Containing a statement of the authorities. 61 Cent. L. J. 446.

EXPERT TESTIMONY FROM THE STANDPOINT OF THE WITNESS. *Albert S. Osborn.* Suggesting, as a cure for present evils, that qualified expert witnesses be appointed for definite terms by the higher state courts. 67 Alb. L. J. 330.

FEDERAL CONTROL OF INSURANCE. *Andrew Alexander Bruce.* Criticising the Report of Committee on Insurance Law, presented at the last meeting of the American Bar Association, and objecting to the centralization of such power in the federal government. 61 Cent. L. J. 384. See 19 HARV. L. REV. 142.

GOVERNMENTAL REGULATION OF RAILROAD RATES. *George R. Peck.* Arguing that Congress cannot delegate to any other body the power of fixing railroad rates *in futuro*, as it is a legislative function. 13 Am. Law. 485.

IDENTIFICATION AND INDORSEMENT. *Anon.* Showing that a bank has a legal right to require identification of payee or a guaranty before payment; also contending that a bank has a legal right to require payee to endorse. 22 Bank. L. J. 847.

INTERNATIONAL LAW UNDER QUEEN ELIZABETH. *Edward P. Cheyney.* 20 Eng. Hist. Rev. 659.

JURISDICTION OF FEDERAL COURTS IN ACTIONS IN WHICH CORPORATIONS ARE PARTIES. *Jacob Trieber.* 13 Am. Law. 477.

LAW OF BANK CHECKS, PRACTICAL SERIES ON THE. IV. NEGOTIATION. *Anon.* Discussing rights of payee against drawer when check is negotiated by a third party; negotiation by agent, trustee, or customer. 22 Banking L. J. 831.

LIFE SALVAGE. *Frederic Cunningham.* 17 Green Bag 708. See *supra.*

LIMITATIONS UPON THE POWER OF ONE STATE TO EXCLUDE THE CORPORATIONS OF ANOTHER. *Eugene F. Ware.* 17 Green Bag 699. See NOTES, p. 291.

OBLIGATION OF CONTRACT IN ITS RELATION TO THE U. S. CONSTITUTION. *Theodore F. C. Demarest.* Discussing U. S. Const., Art. I. sec. 10, as a ground for the decision in Muhler *v.* New York, etc., R. R. Co., 197 U. S. 544. 67 Alb. L. J. 315.

PACIFIC ISLAND LABORERS ACT, 1901 (No. 16 of 1901). *B. A. Ross.* Questioning the right of a country to deport laborers. 3 Commonwealth L. Rev. 3.

POSITION OF A TRUSTEE IN BANKRUPTCY WITH REFERENCE TO INVALID TRANSFERS OR LIENS, THE. *Ellicott D. Curtis.* 5 Columbia L. Rev. 584.

REMARKS UPON CHARGING THE JURY IN A TRIAL FOR MURDER, SOME. *Robert Ralston.* Read before Pennsylvania Bar Association, 1905. 53 Am. L. Reg. 658.

STATUTE OF USES AND THE MODERN DEED, THE. *John R. Rood.* 4 Mich. L. Rev. 109.

STATUTES REGULATING MEDICAL PRACTICE. *Lewis Hochheimer.* Collecting the cases that discuss what constitutes the practice of medicine. 61 Cent. L. J. 424.

WAR, ARBITRATION, AND PEACE. *W. P. Rogers.* Advocating international arbitration. 4 Mich. L. Rev. 91.

WAR IN THE ORIENT IN THE LIGHT OF INTERNATIONAL LAW, THE. *Theodore J. Grayson.* Discussing various novel questions in international law brought up by the recent war. 53 Am. L. Reg. 672.

II. BOOK REVIEWS.

THE LAW OF CONTRACTS. By William Herbert Page. In three volumes. Cincinnati: The W. H. Anderson Company. 1905. pp. cccclxv, 1–848; 851–1930; 1933–3083. 8vo.

This work is a disappointment. It is of value, but it falls far short of what it might have been It is neither a first-class digest nor a first-class treatise. Neither does it satisfactorily collect the cases under appropriate sections, nor does it discuss principles so as to throw real light on the matter in hand. Of historical investigation it shows little or none. It is simply another bulky treatise which deals with its subject in an uncritical way, retaining many old fallacies and, it is to be feared, giving succor to more than one that is new. On the other hand it must be given credit for rejecting many common errors and for having cited, though often without careful discrimination, most of the recent cases on the subject. It is only proper that these criticisms should be supported by some reference to the work itself.

In § 274 the common definition of consideration as "a benefit to the promisor, or a detriment to the promisee" is adopted. While this definition persists in the books, it is certain that the number of cases in which a benefit to the promisor has been *held* sufficient are few indeed. Of those that Professor Page cites, not one is a decision in point. Referred to in one of the cases cited by him, however, is a decision (Burruss *v.* Smith, 75 Ga. 710) which might be thought to be in point. But why was not Scotson *v.* Pegg (6 H. & N. 295) included among the references? It is a leading case. The court go expressly upon the notion that a benefit is sufficient and it is only by adopting their argument that the case can be made to square with the ordinary statement that doing or promising what you are already bound to do is not a consideration. And other cases similar to Scotson *v.* Pegg could have been added. Williston, Cases on Contracts, I, 248. Professor Langdell (Summary of Contracts, § 64) long since pointed out that benefit to the promisor, while necessary to create a common-law debt, is neither necessary nor sufficient to make a promise binding. Indeed, to create a debt a detriment also is required, so that even there benefit though necessary is not a sufficient consideration. Most writers on contracts have agreed with Professor Langdell. Pollock, 6th ed., 164; Anson, Huffcut's ed., 88; Harriman, 1st ed., 56–7; Ames, 2 HARV. L. REV. 1; Williston, 8 *ibid.* 33; Holmes, Com. Law, 290. Every case, and they are numerous in America (Williston, Cases on Contracts, I, 252, note), holding that a promise